United States Court of Appeals

for the

District of Columbia Circuit

TRANSCRIPT OF RECORD

BRIEF OF APPELLANT, LOUIS LUKE WILLIAMS

81

In The

UNITED STATES COURT OF APPEALS

FOR THE DISTRICT OF COLUMBIA CIRCUIT

Docket Number 23718

UNITED STATES OF AMERICA

Appellee,

v.

LOUIS LUKE WILLIAMS

Appellant.

ON APPEAL FROM A JUDGMENT OF THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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for the District of Columbia
Circuit

QUESTIONS PRESENTED

1. Was the judgment of guilty of uttering erroneously entered when there was no evidence of appellant's prior knowledge of the falsity or forgery of the check and when the check was unendorsed when presented?

2. Did the trial Court overstep its proper function in excessively interrogating the witnesses and in putting questions to the appellant which were designed to produce evidence favorable to the Government?

This case has not previously been before this Court.

UNITED STATES OF AMERICA

Appellee,

v.

LOUIS LUKE WILLIAMS

Appellant.

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AUTHORITIES CITED

*Cases or authorities chiefly relied upon are marked by asterisks.

The courts of appeals shall have jurisdiction of appeals from all final decisions of the district courts of the United States.

REFERENCES TO RULINGS

There are no references to rulings by the trial Court which appellant wishes to bring to the attention of this Court.

STATEMENT OF THE CASE

The appellant was indicted in two counts, the first for forgery of a check drawn on the Security Bank to the order of James Thomas in the amount of $118.20 purportedly by Ira T. Byram, Jr. At the beginning of the trial held to the Court without a jury pursuant to a waiver of trial by jury executed by appellant and his attorney, the Court approved the Motion of the United States to withdraw and dismiss the first count. (Tr. 3). Thereupon, the Court proceeded to hear the trial of the appellant on the second count of the indictment which provided:

> On or about August 12, 1968, within the District of Columbia, Louis L. Williams, with intent to defraud, passed and uttered to Helen L. Sneddon, as true and genuine, a falsely made and forged bank check, a copy of which is set forth in the first count of this indictment and is incorporated herein by reference, well knowing the aforesaid check to be falsely made and forged.

The prosecution's witness, Helen Sneddon, testified that on August 12, 1968, she was employed by the Security Bank and that the appellant "walked up with a check to be cashed***," (Tr. 4) and that when she went to the files to determine the authenticity of the account, she was told that the person whose name as maker was on the check had been dead for two years. (Tr. 5). The witness identified

the appellant who was sitting in the Courtroom as the man who gave her the check in question. (Tr. 5). Miss Sneddon further testified that the appellant also gave her "a small folder" which had the name "James Thomas" on it, such name being that appearing on the check as the payee. (Tr. 6). However, she later testified in response to further interrogation by the Court that she was not certain that the identification paper which the appellant presented her was that of James Thomas. (Tr. 7). Miss Sneddon testified that the appellant said nothing to her and that he had not endorsed the check. (Tr. 7).

Without laying any foundation or connection with the customer of the bank whose check was presented at the trial, the Government offered in evidence a death certificate issued by the District of Columbia Public Health Department stating that one Ira T. Byram, Jr., died March 13, 1966, and it was received in evidence. (Tr. 8, 9).

The bank officer, David E. Rozzelle, was presented by the Government as a witness, and he testified that one of the bank tellers brought the aforesaid check to him and that the appellant came over to see him. (Tr. 10,11). Mr. Rozzelle told the Court that Ira T. Byram, Jr., the customer whose check was brought by the teller to the witness had been dead for some time and that the signature appearing thereon was not that of Mr. Byram. (Tr. 10).

No basis for the qualification of the witness to offer an opinion as to the authenticity of the signature of the maker of the check was established. (Tr. 10). Mr. Rozzelle also identified the appellant as the person whom he saw in the bank concerning the aforesaid check. (Tr. 11). The witness was not asked nor did he testify that the appellant endorsed the check or that he said anything to the witness. He did testify that the appellant "waited around for a few minutes and then left the bank***," and that he left the check with the witness. (Tr. 11).

A police officer, Bernard K. Short, testified that he responded to a call from the bank on the day in question and that after Mr. Rozzelle pointed the appellant out, the police officer chased and apprehended the appellant. (Tr. 13).

At the close of the Government's case, counsel for the appellant moved for acquittal on the basis that there had been no proof of uttering, and although the Court did not expressly deny the motion, it responded thereto by saying that the appellant passed the check and that it is a forged instrument.

The appellant's explanation of the circumstances which had been related by the Government witness was that he found the check on the sidewalk near the bank together with some other papers which were dropped by a man

whose identity was unknown to the appellant and to whom the appellant attempted to advise of the dropped papers but who ignored appellant. (Tr. 15, 16). He then testified that he took the check to the Security Bank, which was near the place where he found it, and gave it to Miss Sneddon, the Government's first witness, together with his "work card" after she asked him for some identification. (Tr. 16, 17, 19). He testified that his purpose in taking the check to the bank was to return it as lost property. (Tr. 18). Appellant's further testimony was to the effect that he did meet the bank employee witnesses and that after he showed his identification to the teller, he was taken to the bank officer who told him he didn't have time to talk and that appellant after returning the check left the bank. (Tr. 19, 20). He denied having tried to cash the check. (Tr. 19). The appellant further denied that he ran from the bank saying that he could not run because of an injury to his leg. (Tr. 20).

A great amount of the testimony of the Government witness Rozzelle was elicited by the Court. (Tr. 10). The Court in the manner of cross-examination during the course of the appellant's direct examination posed many questions to the witness which were obviously designed to elicit unfavorable responses from the appellant's point of view. (Tr. 17-20 inclusive). Included in such questions

were:

> What did you present identification for? Did you tell the woman you found the check on the street? (Tr. 17).
>
> Why did you care whether [the check] it was any good or not? (Tr. 18).
>
> Why didn't you tell the lady you found the check on the street and turn it in to her? Why were you concerned whether it was a good check or not? (Tr. 18).
>
> You weren't trying to cash the check, were you? (Tr. 19).
>
> Why did you walk out of the bank? (Tr. 20).

No other witnesses were presented by the appellant and after argument was waived by the prosecuting attorney and the attorney for the appellant, the Court found the appellant guilty. (Tr. 22).

On October 24, 1969, the trial Court sentenced the appellant to imprisonment for a period of from two to six years, its judgment having been filed October 27, 1969. Rec. Page 16.

STATEMENT OF POINTS

1. The trial Court committed reversible error in finding the appellant guilty of uttering a check when no proof was presented to sustain the necessary findings that appellant intended to defraud or prejudice the right of another or that he knew the check to be false or forged or that the check was falsely made. The appellant desires this Court to refer to pages 7, 14 of the reporter's transcript with respect to Point One.

2. The trial Court committed reversible error in interjecting itself in eliciting testimony of the Government's witnesses and of the appellant with an obvious effort to enhance the Government's case and to attack the case of the appellant. The appellant desires the Court to refer to pages 6, 7, 10 and 17-20 inclusive of the reporter's transcript with respect to Point Two.

SUMMARY OF ARGUMENT

The Government failed to develop evidence of the prior knowledge of appellant that the check he was charged with uttering was false or forged. The check was not endorsed and therefore not apparently capable of effecting a fraud.

The trial Court abused its authority by injecting itself excessively in the questioning of witnesses and in aiding the Government in the presentation of its case.

ARGUMENT

POINT ONE

TO SUSTAIN A JUDGMENT OF GUILTY OF PASSING OR UTTERING, IT IS INCUMBENT UPON THE GOVERNMENT TO PROVE BEYOND A REASONABLE DOUBT THAT THE DEFENDANT PASSED A FALSELY MADE PAPER WITH KNOWLEDGE THAT IT IS FALSE OR FORGED AND WITH INTENT TO DEFRAUD THE RIGHT OF ANOTHER.

The second count of the indictment charged the appellant with having violated the second portion of the provisions of Section 22-1401 D.C. Code,1967 Ed. and of which count the Court found the appellant guilty. That Code Section provides in pertinent part as follows:

> Whoever***passes, utters, or publishes or attempts to pass, utter or publish as true and genuine, any paper so falsely made or uttered, knowing the same to be false or forged with the intent to defraud or prejudice the right of another, shall be imprisoned***. (emphasis supplied)

Appellant submits that no testimony or other evidence was presented by the Government, which if believed by the Court, was competent proof that the appellant passed or uttered or attempted to do so the check referred to in the indictment and presented as evidence at the trial. It was shown during the Government's testimony that the appellant did not endorse the check and that he failed to make any statement to either the teller or the bank officer involved. In fact, the testimony of the appellant that when he handed the bank teller the check which he said that he found, he also handed her his "work card" as his

identification and not that of the payee James Thomas, was not entirely refuted by the Government's witness. For during Miss Sneddon's testimony, she said in response to the persistent questioning of the Court that she could not be certain that the appellant presented her with any paper purporting to identify him as the payee of the check, James Thomas.

Furthermore, the Government failed to present any direct evidence of the knowledge of appellant that the check was "false or forged" as is required by Section 22-1401, D.C. Code 1967. The Court of Special Appeals of Maryland in Pearson v. Maryland, 1969, 258 A.2d 917, in which was involved a prosecution for uttering, held that the trial Court in refusing to charge the jury that prior knowledge by the defendant that the check was a forgery was reversible error, although the statute of Maryland in dealing with the crime of uttering of forged instruments does not specifically include the element of such prior knowledge. Art. 27, Section 44, Maryland Code. The Court in Pearson at page 922 of 258 A.2d said:

> We hold that***[prior knowledge that the instrument was a forgery is an essential ingredient of the offense] and that the factors required to constitute the crime of uttering of a forged instrument under Section 44 [Article 27 of the Maryland Code] are these: 1. the instrument must be uttered or published as true or genuine; 2. it must be known by the party uttering or publishing it that it is

false, altered, forged, or counterfeited; and
3. it must be uttered with intent to defraud another person.

The transcript is void of any testimony tending to prove that appellant had prior knowledge of the forgery.

The Government failed to provide evidence tending to show that appellant intended to defraud the right of another.

Through the mouths of the two Government witnesses employed by the Security Bank, it was shown to the Court that the appellant said not a word to either of them. He handed to Miss Sneddon, the bank teller, a check made payable to another person and which was not endorsed by the payee or any other person using the payee's name. There was evidence through the testimony of the appellant that in response to the request by the teller for identification, he gave her his "work card" while the teller testified that she could not without qualification say that the name on the card presented to her was that of the payee. The appellant was shown by the testimony of both Miss Sneddon and Mr. Rozzelle to have come to the desk of Mr. Rozzelle at the request of Miss Sneddon and as Mr. Rozzelle in substance stated, the appellant stayed at Rozzelle's desk for a few minutes although Rozzelle was absent.

Can the appellant be held to have inferentially demonstrated an intent to defraud or prejudice the rights of another person and can he further be held to have inferentially demonstrated his knowledge that the check was forged under the foregoing circumstances? Appellant submits that the answers to his questions must be in the negative. It would seem to appellant that anyone who intends to commit the offense of uttering a forged or false check would first cause the check which he intends to pass to be in as agreeable form as is possible. Here neither the appellant nor anyone else was shown to have endorsed the check in the name of the payee thereof. Secondly, the appellant was not beyond a reasonable doubt shown to have identified himself as the payee of the check. Thirdly, he was shown to have not spoken a word to either of the witnesses who were employees of the bank and much less was he proved to have misrepresented by word of mouth his connection with the check. Finally, the appellant was shown to have tarried at the desk of the bank officer in obedience to the latter's suggestion that he do so. The foregoing circumstances surrounding the alleged uttering by the appellant of the check are in substantial contradiction to the activities of a person who in fact intends to defraud another by passing a forged instrument.

Although appellant recognizes that at the appellant's motion of judgment of acquittal, the trial Court was required to assume the truth of the evidence developed by the prosecution and that it was required to give the Government the benefit of all legitimate inferences which could be drawn from such evidence, the appellant nonetheless urges upon this Honorable Court that no reasonable inferences could have been drawn by the lower court from the evidence to support a conclusion that (1) the appellant either passed or attempted to pass the check while representing it to be true and genuine; and (2) that he did so knowing it was falsely made or altered; and (3) that the check was apparently capable of effecting a fraud. Such requisite elements of the crime of uttering are among those that are set out in instruction number 71(b), pages 48, 49, in the suggested standardized Criminal Jury Instructions published by the Bar Association of the District of Columbia, 1966. Alse see Frisby v. United States, 38 App. D.C. 22, 26 (1912).

There was certainly no express representation by appellant to the bank teller that the check was true and genuine. There was nothing whatever developed by the Government tending to show that the appellant knew that the check was falsely made or altered. In fact, he testified

that he asked the teller if it was a good check. Finally, the Government's evidence in the form of the check was not endorsed by the appellant when he handed it to the bank teller and, therefore, appellant suggests that it was not "apparently capable of effecting a fraud." It was said by this Court in Thomas v. United States, 93 U.S. App. D.C. 392, 393, 211 F.2d 45, 46, that upon a motion for judgment of acquittal the trial judge must give the Government the benefit of all legitimate inferences to be drawn from its evidence and "When the evidence considered in this light, without conjecture, will permit the conclusion of guilty beyond reasonable doubt within the fair operation of a reasonable mind,*** the motion may properly be denied." (emphasis supplied) How could the trial Court have fairly concluded the guilt of the appellant at the conclusion of the Government's case "without conjecture" when it had been told of the lack of endorsement on the check, that appellant had not said a word and that the appellant did not, at least without some degree of indecision, attempt to identify himself as the payee of the check?

It is conceded by appellant that the trial judge was justified in applying the maxim that "every sane man is presumed to intend the natural consequences of his act." Easterday v. United States, 53 App. D.C. 387, 390, 292 Fed. 664, (1923). But here there were no "natural consequences"

to follow the presentment by appellant of an unendorsed check payable to another person, which support a conclusion of uttering. The check was not in order for payment without the payee's endorsement. Thus, the consequences of the handing of the check by appellant to the bank teller without an endorsement would not have been the payment thereof, and the check was not capable of effecting a fraud. Appellant, therefore, urges upon this Honorable Court that the trial Court was not entitled to conclude by inferential proof that an uttering of the check had been committed by appellant.

Appellant submits that the trial Court had before it insufficient evidence, both at the conclusion of the Government's case and at the conclusion of the trial to support a finding that the appellant had knowledge that the check was forged or false and that he passed such check with the intention to defraud another person or persons. Thus, the Lower Court committed reversible error in finding the appellant guilty of uttering.

POINT TWO

THE TRIAL COURT ABUSED ITS DISCRETION IN EXCESSIVELY INTERJECTING ITSELP BY INTERROGATING GOVERNMENT WITNESSES AND THE APPELLANT, AND THE COURT IN EFFECT TOOK THE PART OF THE PROSECUTION IN ITS INTERROGATION.

The trial Court,as will be seen from an examination of the transcript of the trial,asked of the witnesses

Sneddon and Rozzelle questions which in the opinion of the appellant were designed to produce answers favorable to the Government. Thus, of the bank teller, Miss Sneddon, the Court asked a number of questions including the following, all of which appear on page 7 of the transcript:

> When this man approached you with this check, had he endorsed it?
>
> What did he say when he came up to you?
>
> And the identification he gave you was James Thomas?

The trial judge inquired of the witness Rozzelle, the bank officer, during his direct examination, with the following questions, all of which appear on page 10 of the transcript:

> What made you think the check was no good?
>
> Are you familiar with the deceased's signature?
>
> Was that his signature on the check?
>
> What is the man's name [referring to the maker]?
>
> That was not his signature on the check?

During the direct examination of the appellant, the Court interjected itself even more than in the cases of the two aforesaid Government witnesses, the questions of the Court being in the nature of cross-examination. As is set forth on page 17-20, the Court practically monopolized that portion of the interrogation of the appellant. Those

many questions included the following:

> What was the purpose of your going into the bank with the check?
>
> What did you present identification for? Did you tell the woman you found the check on the street?
>
> Why did you care whether it was any good or not?
>
> It wasn't your property, was it?
>
> Why were you concerned whether the check was any good or not? (this question was repeated in various forms)
>
> You weren't trying to cash the check, were you?
>
> Why did she ask you to identify yourself then?
>
> Why did you walk out of the bank?

In Blunt v. United States, 100 U.S. App. D.C. 266, 276, 244 F.2d 355, 365 (1957), this Court said in relation to the activities of the judge during a jury trial:

> What the judge did here took on the aspect of advocacy. Although he put a few questions to witnesses for the prosecution, his interrogations were largely confined to defense witnesses. The judge may, of course, properly participate in the examination of the witnesses for the purpose of elucidating their testimony in order to assist the jury. But, as was said in Blumberg v. United States, 5 Cir., 1955, 222 F.2d 496, 501: '***it is far better for the trial judge to err on the side of abstention from intervention in the case rather than on the side of active participation in it, especially when the major part, if not all of his interruptions and interventions, through by chance rather than by design, are, or seem to be, on, or tending to be on the side of the government.'

Appellant recognizes, of course, that no jury was present to be subject to the questioning of the witnesses by the

trial Court. Nevertheless, appellant submits that the nature of the questions propounded by the trial judge were clearly indicative of his conclusion of the guilt of the appellant reached before the termination of the trial. Appellant further believes that such judicial questions were formulated more for the purpose of proving the Government's case than to understand the testimony of both Government witnesses and the appellant.

This Court said in Jackson v. United States, 1964, 117 U.S. App. D.C. 325, 326, 329 F.2d 893, 894:

> One obvious general rule that since the judge is something more than a moderator, but always a neutral umpire, the interrogation of witnesses is ordinarily best left to counsel who presumably have an intimate familiarity with the case. A presiding judge can control the trial without participating actively in examination of witnesses. (emphasis supplied)

In the trial below, the Court in asking the foregoing questions in the manner in which he did, could hardly be classified as "a neutral umpire."

In Jackson, supra, the Court stated immediately after the foregoing quotation:

> In a non-jury case, as in an Appellate Court, needless or active interrogation by judges, although not always helpful, is rarely prejudicial.

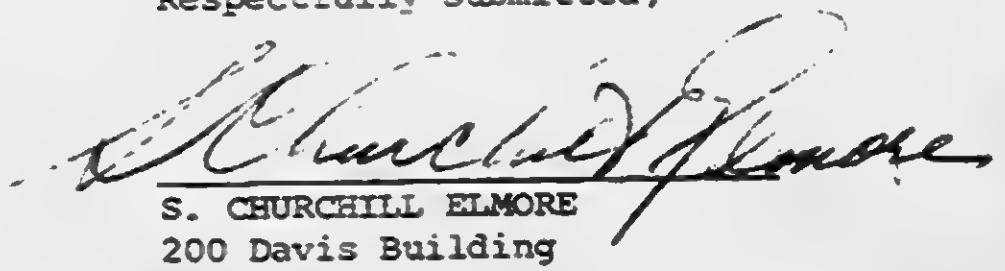
Appellant submits that the rarity of prejudice to the defendant in a non-jury criminal trial was definitely present at the trial below. For the trial judge, if a case was indeed proven, in large measure established the

case through his questions.

CONCLUSION

For the reasons hereinabove stated, the appellant urges upon this Honorable Court that it determine that the trial Court committed reversible error and that its judgment be reversed.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Brief of Appellant was served by hand this 5th day of March, 1970, on the Honorable Thomas Flannery, Esq., United States Attorney for the District of Columbia, Attorney for Appellee, United States Court House, Washington, D.C.

S. CHURCHILL ELMORE

IN THE UNITED STATES COURT OF APPEALS FOR THE
DISTRICT OF COLUMBIA CIRCUIT

UNITED STATES OF AMERICA, Appellee	)	
vs.	)	Criminal No. 1702-68
	)	Docket No. 23,718
LOUIS LUKE WILLIAMS, Appellant	)	

PETITION FOR REHEARING AND SUGGESTION FOR REHEARING EN BANC

Petitioner, Louis Luke Williams, by and through his court-appointed attorney on appeal, S. Churchill Elmore, respectfully petitions this Court to grant a rehearing en banc, and for reasons therefore says as follows:

1. On December 17, 1970, this Court filed its judgment affirming the judgment of the United States District Court for the District of Columbia. No opinion was rendered in this case.

2. In the opinion of petitioner, this Petition for Rehearing and Suggestion for Rehearing En Banc should be granted for the following reasons:

A. NO TESTIMONY OR OTHER EVIDENCE WAS PRESENTED BY THE GOVERNMENT TO SHOW THAT THE PETITIONER HAD KNOWLEDGE THAT THE CHECK UTTERED WAS "FALSE OR FORGED" AS IS REQUIRED BY SECTION 22-1401, D.C. CODE 1967

Petitioner submits that this Court has overlooked the requirement that in a forgery or uttering under Section 22-1401, D.C. Code 1967, the Government must present direct

evidence of the knowledge of petitioner that the check was "false or forged". The relevant code section on forgery and uttering provides as follows:

> "Whoever *** passes, utters, or publishes or attempts to pass, utter or publish as true and genuine, any paper so falsely made or uttered, knowing the same to be false or forged with the intent to defraud or prejudice the right of another, shall be imprisoned ***." (emphasis supplied)

Knowledge on the part of the accused that the check which is uttered is a forged check is a basic requirement to sustain a conviction of uttering. For as is stated in State vs. Pearson, 258 A.2d 917, 922 (Md. 1969):

> "We hold that *** (prior knowledge that the instrument was a forgery is an essential ingredient of the offense) and that the factors required to constitute the crime of uttering of a forged instrument under Section 44 (Article 27 of the Maryland Code) are these: 1. the instrument must be uttered or published as true or genuine; 2. it must be known by the party uttering or publishing it that it is false, altered, forged, or counterfeited; and 3. it must be uttered with intent to defraud another person."

Although the Statute of Maryland dealing with the crime of uttering of forged instruments does not specifically include the element of prior knowledge, the District of Columbia Code, Section 22-1401, specifically provides that prior knowledge that an accused must know the instrument to be false or forged. The trial transcript is void of any testimony tending to prove directly or inferentially that petitioner had prior knowledge of the forgery of the checks in question. Without proof of

such prior knowledge, the Government failed to establish an essential element of the offense and petitioner's judgment of conviction should be reversed.

B. THE LOWER COURT ABUSED ITS DISCRETION BY ITS EXCESSIVE INTERROGATION OF GOVERNMENT WITNESSES AND PETITIONER, AND, IN EFFECT, THE COURT ESTABLISHED ESSENTIAL ELEMENTS OF THE GOVERNMENT'S CASE

Petitioner submits that a fair reading of the trial transcript in this case indicated that the trial court abused its discretion in its excessive interrogation of Government witnesses and the petitioner which established crutial elements of the Government's case against petitioner. The questions by the trial court were formulated more for the purpose of proving the Government's case than to understand the testimony of all Government witnesses and the petitioner. As is shown on pages 7, 10, and 17-20 of the trial transcript, the court interrogated not only the Government witnesses and established certain elements of the Government's case, but the court practically monopolized the cross-examination of your petitioner. The trial court was not a neutral umpire but it became an advocate for the Government and the excessive interrogation of the witnesses in this case was prejudicial to petitioner and deprived him of a fair trial. Jackson vs. United States, 117 U.S. App. D.C. 325, 326, 329 F.2d 893, 894 (1964); Blunt vs. United States, 100 U.S. App. D.C. 266, 276, 244 F.2d 355, 365 (1957).

For the reasons set forth herein, the judgment issued

by the three-judge panel of this Court should be withdrawn and this case should be reheard by the full court en banc.

Respectfully submitted,

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CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing Petition for Rehearing and Suggestion for Rehearing En Banc was served, by hand delivery, this 5th day of January, 1971, on the Office of the United States Attorney for the District of Columbia, United States Court House, 3rd and C Streets, N. W., Washington, D. C. 20001.

S. Churchill Elmore